

ACT No. 2000 - 775

1 SB273
2 28525-5
3 By Senator Enfinger
4 RFD: Children, Youth Affairs, and Human Resources
5 First Read: 08-FEB-2000



Enrolled, An Act,

. . Providing for criminal background checks for licensees, license applicants, volunteers, volunteer applicants, and prospective and current employees of licensed or approved child and adult care facilities and for foster homes and adoptive homes approved by child placing agencies or the Department of Human Resources; requiring the Department of Human Resources to request criminal history background information on all license applicants, current licensees, applicants for employment, volunteers, and certain current employees and to issue suitability determinations based upon the presence of certain convictions; authorizing fees to cover the cost of securing criminal history background information; authorizing the Department of Human Resources and the Department of Public Safety to develop and promulgate rules and regulations pursuant to the Administrative Procedure Act; and repealing Sections 26-10-1 to 26-10-6, inclusive, Code of Alabama 1975, relating to background checks.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Under the National Child Protection Act of 1993, Public Law 103-209, 42 U.S.C. §5119, et seq., the states are permitted to implement a computerized information system to provide child abuse crime information through the Federal Bureau of Investigation National Criminal History

1 Record Information System. The states may conduct a nationwide
2 criminal history background check for the purpose of
3 determining whether an individual who shall have unsupervised
4 access to children, the elderly, or individuals with
5 disabilities has been convicted of a crime that bears upon the
6 fitness of the individual to provide care to or have
7 responsibility for the safety and well-being of children, the
8 elderly, or individuals with disabilities as defined in this
9 act. The Legislature finds that there is an important state
10 interest and it is in the best interest of the children, the
11 elderly, and individuals with disabilities of Alabama to
12 protect them from those persons who may inflict physical or
13 mental injury or abuse, sexual abuse or exploitation, or
14 maltreatment or other mistreatment upon children, the elderly,
15 or individuals with disabilities. Therefore, it is the intent
16 of the Legislature to provide for the implementation of a
17 system that allows the Department of Human Resources, licensed
18 child placing agencies, and child and adult care facilities to
19 ensure that current licensees, license and volunteer
20 applicants, prospective employees, current employees, and
21 volunteers are suitable for employment, to perform volunteer
22 work, or to hold a license, permit, approval, or certification
23 and have not been convicted of a crime that bears upon their
24 fitness to provide care or have responsibility for the safety
25 or well-being of children, the elderly, or individuals with
26 disabilities as defined in this act.

1 Section 2. When used in this act, the following
2 words shall have the following meanings:

3 (1) ADULT. An individual 19 years of age and older.

4 (2) ADULT CARE FACILITY. A person or entity holding
5 a Department of Human Resources license or approval or
6 certification to provide care, including foster care for
7 adults.

8 (3) APPLICANT. A person or entity who submits an
9 application for license as a child care or adult care facility
10 to the Department of Human Resources or a child placing
11 agency, or an application for employment or for a volunteer
12 position to a Department of Human Resources licensed child
13 care or adult care facility. With regards to child care and
14 adult care facilities in a home setting, the term includes an
15 adult household member whose residence is in the home. The
16 term also includes an individual who submits an application
17 for a volunteer position or for employment with the Department
18 of Human Resources in a position in which the person has
19 unsupervised access to children, adults, or individuals with
20 disabilities as one of the essential functions of the job. The
21 term also includes an applicant for approval as an adoptive
22 parent of a child or as a foster parent of an adult or child.

23 (4) CARE. The provision of care, treatment,
24 education, training, instruction, supervision, or recreation
25 to children, adults, or individuals with disabilities.

(5) CARETAKER SETTING. A building, structure, or location, public or private property, or vehicle, utilized for or involved in the providing of care, education, training, instruction, or supervision of children, adults, or individuals with disabilities or transportation in connection with activity provided by a licensed, approved, or certified child or adult care facility.

(6) CHIEF EXECUTIVE OFFICER. The Commissioner of the Department of Human Resources, the director of a county department of human resources, or the head of an employer covered by this act, but not specifically enumerated.

(7) CHILD or CHILDREN. An individual under 19 years of age.

(8) CHILD CARE FACILITY. A person or entity holding a Department of Human Resources license, permit, or approval to provide child care, including foster care, under Chapter 7 of Title 38 of the Code of Alabama 1975. The term excludes exempt child care facilities.

(9) CHILD PLACING AGENCY. A person or entity licensed by the Department of Human Resources under Chapter 7 of Title 38 of the Code of Alabama 1975, issuing approvals to foster family homes and adoptive homes.

(10) CONVICTION. A determination of guilt as the result of a plea, including a plea of nolo contendere, or a trial.

(11) CRIMINAL HISTORY BACKGROUND INFORMATION CHECK.

The review of any and all records containing any information collected and stored in the criminal record repository of the Federal Bureau of Investigation and the Alabama Department of Public Safety involving an arrest or conviction by a criminal justice agency, including, but not limited to, child abuse crime information as defined by 42 U.S.C. §5119, the National Child Protection Act of 1993, conviction record information, fingerprint cards, correctional data and release information, and identifiable descriptions and notations of convictions. Criminal history background information shall not include any analytical records or investigative reports that contain intelligence information or criminal investigation information.

(12) CURRENT. An individual who is presently

employed, licensed or approved, or working as a volunteer on the effective date of this act.

(13) DAILY LIVING TASKS. Activities of daily living,

including walking, working, learning, grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, transportation, managing money, maintaining a residence, writing, and using telephones, computers, and other automated communication devices.

(14) ELDERLY. An individual 65 years of age or

older.

1 (15) EMPLOYEE. An individual currently in the
2 service of an employer for compensation, full-time or
3 part-time, and employed by contract or at will, in which the
4 employer has the authority to control the person in the
5 material details of how work shall be performed and when
6 compensation shall be provided.

7 (16) EMPLOYER. An individual, person, group of
8 persons, association, partnership, corporation, limited
9 liability company or partnership, business, or other entity
10 which hires employees, has volunteers, or contracts with
11 others to provide personnel to work with or provide care to
12 children, adults, or individuals with disabilities in a
13 caretaker setting.

14 (17) ESSENTIAL FUNCTIONS. The fundamental, not
15 merely marginal, job duties of the employment as determined by
16 a written job description or the judgement of the employer.

17 (18) EXEMPT CARE FACILITY. A person or entity exempt
18 by law from licensure by the Department of Human Resources or
19 a child placing agency, including church day care, child
20 centers, or elder centers.

21 (19) INDIVIDUAL. A natural person.

22 (20) INDIVIDUAL WITH DISABILITIES. A person with a
23 mental or physical impairment who requires assistance to
24 perform one or more daily living tasks.

25 (21) LAW ENFORCEMENT. The sheriff's department of a
26 county or the police department of a municipality.

(22) LICENSE. A license, permit, certification, approval, registration, or other form of permission required by law by whatever designation for a child care facility, adult care facility, child placing agency, foster parent or foster home, adoptive parent or adoptive home, or any other person or entity in which an individual has unsupervised access to children, the elderly, or individuals with disabilities.

(23) LICENSED SOCIAL WORKER. A social worker licensed by the Alabama State Board of Social Work Examiners to conduct family home studies and psychosocial assessments in adoptive or custody cases by court order or for treatment not otherwise required to conduct a criminal history check.

(24) LICENSEE. Holder of a license or approval and an adult household member whose residence is in the home in regards to child care and adult care facilities in a home setting.

(25) PERSON or ENTITY. A natural person, sometimes referred to as an individual, an owner or operator of any adult care facility, child care facility, child placing agency, exempt child care facility, or licensee, whether an individual, corporation, limited liability company or partnership, partnership, association, or other legal entity or group, and a board member, an officer, member or partner of an entity who has direct contact with children, the elderly, or individuals with disabilities in care.

1 (26) REASONABLE SUSPICION. Belief by a prudent
2 person that reasonable articulable grounds exist to suspect
3 that the employee's past or present behavior should be
4 reviewed to determine if such behavior or conduct bears upon
5 the individual's fitness to teach or supervise or have
6 responsibility for the safety and well-being of children, the
7 elderly, or persons with disabilities as defined in this
8 chapter.

9 (27) REPORT. A written statement of criminal history
10 background information.

11 (28) RESIDENCE. Place of abode, domicile, or
12 dwelling with intention to remain permanently and continuously
13 or for an indefinite or uncertain length of time.

14 (29) SEX CRIME. Includes the following:

15 a. Enticing a child to enter a vehicle, room, house,
16 office, or any other place for immoral purposes, as proscribed
17 by Section 13A-6-69 of the Code of Alabama 1975.

18 b. Incest, when the offender is an adult and the
19 victim is a minor, as proscribed by Section 13A-13-3 of the
20 Code of Alabama 1975.

21 c. Kidnapping of a minor, except by a parent, in the
22 first or second degree, as proscribed by Section 13A-6-43 or
23 Section 13A-6-44 of the Code of Alabama 1975.

24 d. Promoting prostitution in the first or second
25 degree, as proscribed by Section 13A-12-111 or Section
26 13A-12-112 of the Code of Alabama 1975.

1 e. Rape in the first or second degree, as proscribed
2 by Section 13A-6-61 or Section 13A-6-62 of the Code of Alabama
3 1975.

4 f. Sexual misconduct, as proscribed by Section
5 13A-6-65 of the Code of Alabama 1975.

6 g. Sexual torture, as proscribed by Section 13A-6-65
7 of the Code of Alabama 1975.

8 h. Sexual abuse in the first or second degree, as
9 proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code
10 of Alabama 1975.

11 i. Sodomy in the first or second degree, as
12 proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code
13 of Alabama 1975.

14 j. Soliciting a child by computer for the purposes
15 of committing a sexual act and transmitting obscene material
16 to a child by computer as proscribed by Sections 13A-6-110 and
17 13A-6-111 of the Code of Alabama 1975.

18 k. Violation of the Alabama Child Pornography Act,
19 as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196,
20 or 13A-12-197 of the Code of Alabama 1975.

21 l. Any solicitation, attempt, or conspiracy to
22 commit any of the offenses listed in paragraphs a. to k.,
23 inclusive.

24 m. A crime listed in the Community Notification Act,
25 Chapter 20 of Title 15 of the Code of Alabama 1975.

1 n. Conviction for a violation or attempted violation
2 of an offense committed outside the State of Alabama or under
3 federal law is a sex crime or any other crime if the offense
4 would be a crime in Alabama.

5 (30) SUITABILITY CRITERIA.

6 a. Convictions for any of the following crimes shall
7 make an individual unsuitable for employment, volunteer work,
8 approval, or licensure:

9 1. Murder, manslaughter, or criminally negligent
10 homicide. .

11 2. A sex crime.

12 3. A crime that involves the physical or mental
13 injury or maltreatment of a child, the elderly, or an
14 individual with disabilities.

15 4. A crime committed against a child.

16 5. A crime involving the sale or distribution of a
17 controlled substance.

18 6. Robbery.

19 7. A crime or offense committed in another state or
20 under federal law which would constitute any of the above
21 crimes in this state.

22 b. Conviction for any crime listed in the Adoption
23 and Safe Families Act, 42 U.S.C. §671(g)(20), shall disqualify
24 a person from being approved or continuing to be approved as a
25 foster parent or adoptive parent and a convicted person shall

1 be deemed unsuitable for employment, volunteer work, approval,
2 or licensure as a foster parent or adoptive parent.

3 c. The Department of Human Resources may set other
4 disqualifying convictions by rule under the Administrative
5 Procedure Act, Section 41-22-1 of the Code of Alabama 1975, et
6 seq., for Department of Human Resources licensed child or
7 adult care facilities.

8 (31) SUITABILITY DETERMINATION. A decision that an
9 individual is or is not suitable for employment, volunteer
10 work, or licensure based upon the existence of a prohibited
11 criminal conviction.

12 (32) UNSUPERVISED ACCESS TO A CHILD OR CHILDREN, THE
13 ELDERLY, OR AN INDIVIDUAL WITH DISABILITIES. Contacts,
14 interviews, questions, examinations, interaction, or
15 communications outside the presence, supervision, and control
16 of someone other than a child or elderly or disabled
17 individual in care during the provision of care, education,
18 training, instruction, supervision, or other employment or
19 license related activities.

20 (33) VOLUNTEER. An individual who provides services
21 without an express or implied promise of compensation, but
22 shall not include the parent, family member, legal custodian,
23 or legal guardian of a child, the elderly, or disabled
24 individual in care.

25 (34) WRITTEN CONSENT. A signed statement by the
26 applicant or employee containing all of the following:

1 a. The name, address, date of birth, race, gender,
2 and Social Security number appearing on a valid identification
3 document as defined in subsection (d) of 18 U.S.C. §1028. If
4 the applicant does not have a Social Security number because
5 of sincerely held personal beliefs, the Social Security number
6 shall not be required and the Department of Human Resources
7 and the Department of Public Safety shall provide an
8 alternative means of identification and procedure.

9 b. Notice to the applicant or employee of the right
10 to obtain a copy of the background check report, challenge the
11 accuracy and completeness of any information contained in the
12 report, and to obtain a prompt determination as to the
13 validity of a challenge.

14 c. Name, address, and telephone number of the
15 employer or licensing entity for which the criminal history
16 information is being sought.

17 d. Release of the criminal history report to the
18 Department of Human Resources.

19 Section 3. (a) On the effective date of this act,
20 every employer, child care facility, adult care facility, the
21 Department of Human Resources, and child placing agency shall
22 request the Department of Public Safety to conduct a criminal
23 history background information check for the following:

24 (1) An employment applicant, employee or volunteer
25 of an employer, child care facility, adult care facility, or
26 child placing agency.

1 (2) A current foster parent for a child or adult or
2 adult household member of a foster family or applicant and an
3 adult household member of a foster family seeking approval to
4 operate as a foster parent or foster family home for a child
5 placing agency or the Department of Human Resources. No
6 criminal history background information check shall be
7 conducted under this act on a current foster parent or
8 household member of a foster family if a Federal Bureau of
9 Investigation and Alabama Department of Public Safety criminal
10 history background information check has already been
11 conducted under other law. Subsequent convictions of foster
12 parents, or convictions entered into the system subsequent to
13 the initial report, shall be sent by the Department of Public
14 Safety to the Department of Human Resources as provided in
15 this act.

16 (3) An applicant in a position in the Department of
17 Human Resources which requires unsupervised access to
18 children, the elderly, or individuals with disabilities as one
19 of the essential functions of the job. No current employee of
20 the Department of Human Resources shall be subjected to a
21 criminal history background information check except upon
22 reasonable suspicion. Criminal history background checks shall
23 be required for prospective and current personnel under
24 contract with the Department of Human Resources or working
25 with another entity under contract with the Department of
26 Human Resources, students, mentors, and volunteers in

positions requiring unsupervised access to children, the elderly, or persons with disabilities as one of the essential functions of the job. The Department of Human Resources shall pay any fees related to checks required pursuant to this subdivision.

(4) A current licensee or applicant for a license through the Department of Human Resources to operate a child care or adult care facility.

(5) A parent applicant for a child adoptive placement through the Department of Human Resources or child placing agency and any Department of Human Resources or child placing agency approved adoptive parent prior to entry of a final decree of adoption. No criminal history background information check shall be conducted under this act on a current adoptive parent or household member of an adoptive family if a Federal Bureau of Investigation and Alabama Department of Public Safety criminal history background information check has already been conducted under other law. Subsequent convictions of adoptive parents, or convictions entered into the system subsequent to the initial report, shall be sent by the Department of Public Safety to the Department of Human Resources as elsewhere provided in this act.

(b) An employer, child care facility, adult care facility, the Department of Human Resources, or a child placing agency may only request a criminal history background

1 information check by its chief executive officer, or his or
2 her designee authorized in writing and notarized, and law
3 enforcement shall render assistance, including assistance in
4 obtaining fingerprints required for submission of a request to
5 the Department of Public Safety.

6 (c) Every employee, volunteer or applicant, for
7 employment or a volunteer position, licensee, Department of
8 Human Resources adoptive parent applicant or approved adoptive
9 parent, or applicant for a license to the Department of Human
10 Resources to operate a child care or adult care facility shall
11 submit two sets of fingerprints and sign a written consent to
12 obtain the criminal history background information.

13 Fingerprints shall not be required when a disability prevents
14 a person from being fingerprinted. Disabilities preventing
15 fingerprinting include the loss of both hands, severe scarring
16 of all fingers, closed paralytic hands, and similar
17 disabilities. In cases involving disability, a written consent
18 to obtain available criminal history background information by
19 name only shall be obtained. No one who fails or refuses to
20 give written consent or submit fingerprints necessary to
21 obtain criminal history background information may be
22 employed, allowed to perform volunteer or other work, approved
23 or issued a license, or allowed to retain a license or
24 approval by the Department of Human Resources, an employer,
25 child care facility, adult care facility, or child placing
26 agency.

1 (d) Child care facilities or adult care facilities
2 exempt from Department of Human Resources licensing shall not
3 be required to comply with this act, but may voluntarily
4 collect and forward two complete acceptable sets of
5 fingerprints, the written consent, and nonrefundable fee from
6 applicants or employees to the Department of Public Safety to
7 request a criminal history background information check which
8 shall be processed pursuant to this act. Licensed social
9 workers conducting home studies may also request a criminal
10 history background check which shall be processed pursuant to
11 this act. Provided, however, if a license-exempt child care
12 facility operated as part of a church ministry or religious
13 school does not choose to comply with this act on a voluntary
14 basis, then the employee or prospective employee of the child
15 care facility shall request a criminal history background
16 check, and the request shall be processed in the same manner
17 as for other employees or applicants under the provisions of
18 this Act. The Department of Human Resources shall, prior to
19 the disbursement of any subsidized child care funds, require
20 all employees and applicants of legally operating child care
21 facilities to submit verification of the application for a
22 criminal history background check and the results thereof when
23 obtained. Upon reasonable suspicion that the individual has a
24 criminal conviction or has not had a criminal history
25 background check conducted, the Department of Human Resources
26 shall have the right to require employees of license-exempt

1 facilities to submit each application for a criminal history
2 background check and the results thereof when obtained.

3 Section 4. (a) Every employer, child care facility,
4 adult care facility, the Department of Human Resources, and
5 child placing agency required to obtain a criminal history
6 background information check pursuant to this act shall
7 obtain, prior to or upon the date of employment, or issuance
8 of a license or approval or renewal thereof, and maintain in
9 the agency or personnel file, a request with written consent
10 for the criminal history background information check and a
11 statement signed by the applicant, volunteer, or employee
12 indicating whether he or she has ever been convicted of a
13 crime, and if so, fully disclosing all convictions. The
14 statement shall include a notice and questionnaire the same as
15 or similar to the following:

16 "MANDATORY CRIMINAL HISTORY CHECK NOTICE: Alabama
17 law requires that a criminal history background information
18 check be conducted on all persons who hold a license or work
19 in a Department of Human Resources licensed child care or
20 adult care facility, a foster or adoptive home approved by the
21 Department of Human Resources, or a licensed child placing
22 agency, including all officers and agents of the entity. You
23 are required to provide full, complete, and accurate
24 information on your criminal conviction history upon
25 application for a license or employment. This information
26 shall be used to determine your suitability to provide care to

1 children, the elderly, or disabled individuals. Unless a
2 criminal history background information check report and
3 suitability determination have previously been obtained, you
4 must complete a written request and consent for a criminal
5 history background information check with fingerprints at the
6 time of application for employment. Refusal to complete these
7 documents or providing false information shall result in
8 refusal of employment, approval, or licensure. The term
9 conviction includes a determination of guilt by a trial, by a
10 plea of guilty, or a plea of nolo contendere. You are required
11 to notify your employer, licensing agency, or entity where you
12 are performing volunteer work of any criminal conviction
13 occurring subsequent to the date of completion of this notice.
14 Any individual determined to have submitted false information
15 shall be referred to the district attorney or law enforcement
16 for investigation and possible prosecution. An individual who
17 intentionally falsifies or provides any misleading information
18 on the statement is guilty of a Class A misdemeanor,
19 punishable by a fine of not more than two thousand dollars
20 (\$2,000) and imprisonment for not more than one year.

21 "Convictions for any of the following crimes shall
22 make an individual unsuitable for employment, volunteer work,
23 approval, or licensure:

24 "1. Murder, manslaughter, or criminally negligent
25 homicide.

26 "2. A sex crime.

1 "3. A crime that involves the physical or mental
2 injury or maltreatment of a child, the elderly, or an
3 individual with disabilities.

4 "4. A crime committed against a child.

5 "5. A crime involving the sale or distribution of a
6 controlled substance.

7 "A sex crime includes the following:

8 "a. Enticing a child to enter a vehicle, room,
9 house, office, or any other space for immoral purposes, as
10 proscribed by Section 13A-6-69 of the Code of Alabama 1975.

11 "b. Incest, when the offender is an adult and the
12 victim is a minor, as proscribed by Section 13A-13-3 of the
13 Code of Alabama 1975.

14 "c. Kidnapping of a minor, except by a parent, in
15 the first or second degree, as proscribed by Section 13A-6-43
16 or Section 13A-6-44 of the Code of Alabama 1975.

17 "d. Promoting prostitution in the first or second
18 degree, as proscribed by Section 13A-12-111 or Section
19 13A-12-112 of the Code of Alabama 1975.

20 "e. Rape in the first or second degree, as
21 proscribed by Section 13A-6-61 or Section 13A-6-62 of the Code
22 of Alabama 1975.

23 "f. Sexual misconduct, as proscribed by Section
24 13A-6-65 of the Code of Alabama 1975.

25 "g. Sexual torture, as proscribed by Section
26 13A-6-65 of the Code of Alabama 1975.

1 "h. Sexual abuse in the first or second degree, as
2 proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code
3 of Alabama 1975.

4 "i. Sodomy in the first or second degree, as
5 proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code
6 of Alabama 1975.

7 "j. Soliciting a child by computer for the purposes
8 of committing a sexual act and transmittal of obscene material
9 to a child by computer as proscribed by Sections 13A-6-110 and
10 13A-6-111 of the Code of Alabama 1975.

11 "k. Violation of the Alabama Child Pornography Act,
12 as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196,
13 or 13A-12-197 of the Code of Alabama 1975.

14 "l. Any solicitation, attempt, or conspiracy to
15 commit any of the offenses listed in paragraphs a. to k.,
16 inclusive.

17 "m. A crime listed in the Community Notification
18 Act, Chapter 20 of Title 15 of the Code of Alabama 1975.

19 "6. Conviction for a crime listed in the federal
20 Adoption and Safe Families Act as prohibiting a person from
21 being a foster parent or adoptive parent shall be deemed to
22 make the convicted person unsuitable for employment, volunteer
23 work, approval, or licensure as a foster parent or adoptive
24 parent.

25 "7. Conviction for a violation or attempted
26 violation of an offense committed outside the State of Alabama

or under federal law is a sex crime or any other crime listed in this notice if the offense would be a crime listed in this notice in Alabama.

"CRIMINAL HISTORY STATEMENT

"Have you ever had a suitability determination made by the Department of Human Resources in connection with a previous criminal history information background check? Yes () No ().

"Have you ever been convicted of a crime? Yes () No (). If yes, state the date, crime, location, punishment imposed, and whether the victim was a child or an elderly or disabled individual.

"Date _____ Signature _____."

(b) An individual who fails or refuses to provide a statement shall not be employed, allowed to work or volunteer, or issued a license or approval as defined in this act. Upon receipt of a signed criminal history statement which does not indicate conviction for a crime prohibiting employment under the suitability criteria, an employer, including the Department of Human Resources, may employ an applicant or allow a volunteer or contract provider to work provisionally pending receipt of a suitability determination from the Department of Human Resources.

(c) No later than the five business days after employment or a reasonable time after completion of application for a license or approval, an employer, the Department of Human Resources, or child placing agency shall mail or deliver a request for a criminal history background information check to the Department of Public Safety accompanied by the following:

(1) Two complete sets of fingerprints, properly executed by a law enforcement agency or an individual properly trained in fingerprinting techniques.

(2) Written consent from the applicant, employee, or volunteer for the release of the criminal history background information to the Department of Human Resources.

(3) The fee.

(d) Upon receipt of a suitability determination from the Department of Human Resources that a person or entity is suitable for employment, volunteer work, licensure, or approval based on the criminal history background information check, an employer, a child care facility, adult care facility, a child placing agency, or the Department of Human Resources may make its own determination of employment, licensure, or approval. This act shall not create any right to employment, work, approval, or licensure. Upon receipt of a determination from the Department of Human Resources that an individual is unsuitable for employment, licensure, approval, or volunteer work, an employer, the child care facility, adult

1 care facility, child placing agency, or Department of Human
2 Resources shall terminate the individual from employment or
3 volunteer work or shall not employ or use the individual.
4 Termination of employment may be delayed by the employer to
5 allow the individual to challenge either the accuracy or
6 completeness of the criminal history information background
7 report or the suitability determination made by the Department
8 of Human Resources. The Department of Human Resources or child
9 placing agency shall suspend or revoke a license or approval
10 or deny a license or approval application to an individual
11 receiving an unsuitability determination. As an alternative to
12 termination of employment, the Department of Human Resources
13 may transfer a permanent Merit System employee to an available
14 position for which the employee is qualified where
15 unsupervised access to children, the elderly, or persons with
16 disabilities shall not be an essential function of the job.

17 (e) If a review of a criminal history background
18 information check or other information received reveals that
19 the person has submitted false information, the employer,
20 child care facility, adult care facility, child placing
21 agency, or Department of Human Resources shall terminate the
22 employee or volunteer. The Department of Human Resources or
23 child placing agency shall revoke the approval or license of a
24 person or entity when the person or entity submits false
25 information in a review of criminal history background
26 information check or other information. The Department of

1 Human Resources shall be notified of the false information and
2 shall refer the case to an appropriate law enforcement agency
3 or district attorney for investigation and prosecution.

4 . . (f) Only one criminal history background information
5 check shall be required on an individual regardless of
6 subsequent changes in employment or licensing or approval
7 status. Subsequent criminal history background information
8 checks may be conducted by the employer or licensing or
9 approval entity. The licensing or approval entity shall pay
10 the cost for subsequent criminal history background
11 information checks. If the statement signed by the applicant
12 or employee states that a criminal history background
13 information check has been performed and suitability
14 determination issued on the individual, the employer or
15 licensing agency may request at the time of application only a
16 suitability determination from the Department of Human
17 Resources on the check previously performed, within five
18 business days of employment, or completion of license or
19 approval application, submitting the same kind of information
20 and consent for the request for suitability determination as
21 required by the written consent for a criminal history
22 background information check.

23 (g) Upon being notified that an individual has
24 already had a criminal history background information check
25 performed by the Department of Education pursuant to the
26 Alabama Child Protection Act, Chapter 22A of Title 16 of the

Code of Alabama 1975, the Department of Human Resources shall request and the Department of Education shall provide criminal history background reports and reports on subsequent convictions, or convictions entered into the system subsequent to the initial report, to the Department of Human Resources without the payment of an additional fee, provided there are no violations of federal laws.

Section 5. (a) An applicant, licensee, volunteer, or employee, upon request, shall submit the following items:

(1) Two functional, acceptable fingerprint cards, bearing the fingerprints of the individual, properly executed by a law enforcement agency or individual properly trained in fingerprinting techniques.

(2) Written consent authorizing the release of any criminal history background information to the Department of Human Resources.

(3) A written statement signed by the applicant, volunteer, or employee indicating whether he or she has ever been convicted of a crime, and if so, fully disclosing all convictions. The statement shall include a notice and questionnaire in the form required in subsection (a) of Section 4.

(4) The fee of an applicant.

(b) An applicant, licensee, volunteer, or employee shall notify the prospective or current employer, licensing agency, or entity for whom volunteer work is being performed

1 of any criminal convictions occurring subsequent to the date
2 of completion of the notice in Section 4.

3 Section 6. (a) A nonrefundable fee to be paid for
4 the criminal history background information check shall
5 conform to the guidelines promulgated pursuant to 42 U.S.C.
6 §5119, the National Child Protection Act of 1993, and state
7 law.

8 (b) The Department of Public Safety may charge a fee
9 in the amount prescribed in Chapter 2, commencing with Section
10 32-2-61, of Title 32 of the Code of Alabama 1975, for the cost
11 of processing the request. The Department of Public Safety
12 shall charge no larger fee for requests than charged for
13 requests received from those entities. The fee charged for
14 criminal history background information checks shall not
15 exceed the statutory and regulatory amounts set under existing
16 guidelines and no additional administrative fees, except for
17 the cost of mailings, shall be charged which would increase
18 the cost of the criminal history background information check.

19 (c) An applicant for employment shall be responsible
20 for the cost of the criminal history background information
21 check. An applicant shall not be required to pay the fee until
22 the prospective employing entity is prepared to consider the
23 applicant and request a criminal history background
24 information check. The chief executive officer of the
25 prospective employing entity may pay the fee of an applicant.

1 (d) For any volunteer or applicant for a volunteer
2 position, the fee for the criminal history background
3 information check may be paid by the volunteer or by the
4 entity requesting volunteer work.

5 (e) An applicant for a license or approval shall pay
6 the fee for the criminal history background information check
7 at the time the application for the license is submitted;
8 except as provided herein, the Department of Human Resources
9 may pay the fee for adult and child foster care applicants and
10 child adoption applicants.

11 (f) For an employing entity that requests a criminal
12 history background information check on a current employee,
13 the employing entity shall pay the fee for the criminal
14 history background information check. The employee may be
15 required to pay the fee or a portion thereof provided there
16 shall be no violation of federal minimum wage requirements.

17 (g) A fee paid for which a criminal history
18 background information check is not performed shall be
19 refunded to the applicant, the individual, or the entity
20 requesting the criminal history background information check.

21 Section 7. (a) Criminal history background
22 information checks shall be performed by the Department of
23 Public Safety upon request by an employer, child care
24 facility, adult care facility, or child placing agency
25 authorized to make a request, or the Department of Human
26 Resources. The Department of Public Safety shall provide a

1 criminal history background check within a reasonable time of
2 the receipt of the request. National criminal history
3 background checks shall be requested by the Department of
4 Public Safety from the Federal Bureau of Investigation within
5 a reasonable time of the request. The Department of Public
6 Safety, upon receipt of the criminal history background report
7 from the Federal Bureau of Investigation, shall forward the
8 report to the Department of Human Resources within a
9 reasonable period.

10 (b) Criminal history background information reports
11 shall be sent directly from the Department of Public Safety to
12 the Department of Human Resources within a reasonable time
13 from the receipt of the report from the Federal Bureau of
14 Investigation. A copy of a criminal history report from the
15 Department of Public Safety and Federal Bureau of
16 Investigation shall be sent by the Department of Human
17 Resources to the applicant or employee by certified mail or
18 personal service. The Department of Human Resources shall
19 review the criminal history record information report and
20 determine whether the applicant, employee, or volunteer meets
21 the suitability criteria for employment or licensure based on
22 the criminal history background information check. The
23 Department of Human Resources shall issue a written
24 suitability determination to the applicant or employee and to
25 the licensing entity or chief executive officer of the child
26 care facility or adult care facility requesting the criminal

1 history background information check. The Department of Public
2 Safety shall notify the Department of Human Resources of a
3 subsequent conviction, or convictions entered into the
4 automated system subsequent to the initial report, for a crime
5 committed on an individual for whom a criminal history
6 background information report has been sent. The Department of
7 Human Resources shall include the conviction in an amended or
8 subsequent suitability determination.

9 (c) A person may contest the accuracy or
10 completeness of the Alabama criminal history background
11 information check pertaining to him or her with the Department
12 of Public Safety according to procedures established by that
13 agency. The person or his or her legal counsel may review at
14 the Department of Human Resources a copy of the Alabama
15 criminal history background information report from the
16 Department of Public Safety. If, upon review by the Department
17 of Public Safety, the information is determined to be
18 incorrect or incomplete, the information shall be corrected
19 appropriately, and the Department of Human Resources shall be
20 provided with the corrected information.

21 (d) The Department of Human Resources shall issue a
22 suitability determination and maintain a confidential file on
23 individuals for whom a criminal history background information
24 report or report updates have been received. The Department of
25 Human Resources may issue a suitability determination based
26 upon the criminal history report on file without the

1 requirement of a new criminal history background information
2 check. If no report or if only an incomplete criminal history
3 report can be located in the files of the Department of Human
4 Resources, the individual shall be required to submit to a new
5 criminal history background information check.

6 (e) Within 30 days of the date of notification, an
7 individual determined unsuitable for approval, licensure,
8 employment, or volunteer work by the Department of Human
9 Resources based upon a disqualifying conviction may request in
10 writing reversal of the determination of unsuitability if the
11 conviction is not for a sex crime or a crime committed against
12 a child, an elderly individual, or an individual with
13 disabilities. An individual with a conviction excluded by
14 federal law from being approved as a foster or adoptive
15 parent, as any other child care or adult care provider, or
16 volunteer may not be considered for reinstatement. In the case
17 of a felony conviction, 10 years shall have lapsed since the
18 sentence was served or the probation or parole ended,
19 whichever is later, with no subsequent conviction. In the case
20 of a misdemeanor conviction, five years shall have lapsed
21 since the sentence was served, or the probation or parole
22 ended, whichever is later, with no subsequent conviction. The
23 individual shall affirmatively demonstrate to the Department
24 of Human Resources successful rehabilitation by clear and
25 convincing evidence. In determining whether an individual has

1 affirmatively demonstrated successful rehabilitation, all of
2 the following shall be considered:

3 (1) Nature and responsibility of the position which
4 the convicted person would hold or has held.

5 (2) Nature and seriousness of the offense committed.

6 (3) Circumstances under which the offense occurred.

7 (4) Date of the offense.

8 (5) Age of the person when the offense was
9 committed.

10 (6) Whether the offense was an isolated or repeated
11 incident.

12 (7) Social conditions which may have contributed to
13 the offense.

14 (8) An available probation or parole record, report,
15 or recommendation.

16 (9) Evidence of rehabilitation, including good
17 conduct in prison or in the community, counseling or
18 psychiatric treatment received, acquisition of additional
19 academic or vocational schooling, successful business or
20 employment history, and the recommendation of his or her
21 supervisors.

22 (f) The Department of Human Resources and the
23 Department of Public Safety may adopt rules and regulations to
24 implement the procedures and requirements of this act pursuant
25 to the Administrative Procedure Act, Section 41-22-1, et seq.,
26 of the Code of Alabama 1975.

1 Section 8. (a) All reports of criminal history
2 background information received by the Department of Human
3 Resources from the Department of Public Safety shall be
4 confidential and marked confidential with no further
5 disclosure and shall not be made available for public
6 inspection.

7 (b) All criminal history background information
8 reports shall be excluded from any requirement of public
9 disclosure as a public record.

10 (c) Without additional public disclosure, the
11 following release of the criminal history background
12 information report shall not be construed to violate this
13 section:

14 (1) Showing the report to the applicant or current
15 employee.

16 (2) Release of the report to a court of competent
17 jurisdiction in the event of litigation brought by the
18 applicant or employee.

19 (3) Release of the report to a court of competent
20 jurisdiction upon a finding that the information is material
21 to the issues of the case before the court.

22 (4) Use of the report in preparation, investigation,
23 and presentation during a criminal prosecution, or in any
24 administrative proceeding involving the challenge to a
25 suitability determination, or revocation of a license or

1 denial of an application for a license by the Department of
2 Human Resources.

3 (5) Release to anyone with the written consent of
4 the employee or volunteer.

5 (d) A person having access to criminal history
6 background information reports and releasing the reports
7 pursuant to this act shall be required to maintain a register
8 consistent with the National Child Protection Act of 1993,
9 Public Law 103-209, 42 U.S.C. §5119, et seq.

10 (e) Nothing in this act shall be construed to
11 prohibit the distribution of employment or licensing status
12 information to an interested party.

13 Section 9. (a) A person convicted of the following
14 actions under this act shall be guilty of a Class A
15 misdemeanor:

16 (1) Violating the confidentiality of records.

17 (2) Violating lawfully adopted policies pursuant to
18 this act.

19 (3) Knowingly, willfully, and intentionally making
20 or transmitting a false or misleading report or information
21 concerning past convictions as required under this act.

22 (4) Knowingly, willfully, and intentionally failing
23 to report subsequent convictions as required by this act.

24 (b) A person who knowingly submits false information
25 concerning past convictions on an application for employment
26 or other form required for disclosure of criminal convictions

1 may be subject to loss of employment and to the loss of any
2 license issued by the Department of Human Resources or child
3 placing agency.

4 . . Section.10. Nothing in this Act is intended to
5 create or establish new causes of action in any court. Nothing
6 in this Act shall be construed as a waiver of any sovereign or
7 qualified immunity.

8 Section 11. All fees received by the Department of
9 Public Safety for criminal history background information
10 checks conducted pursuant to this act shall be deposited to
11 the Public Safety Automated Fingerprint Identification System
12 Fund, to be appropriated to and expended by the Department of
13 Public Safety in accordance with Section 32-2-61 of the Code
14 of Alabama 1975.

15 Section 12. Sections 26-20-1 to 26-20-6, inclusive,
16 Code of Alabama 1975, relating to background checks, are
17 specifically repealed.

18 Section 13. This act is supplementary and shall be
19 construed in pari materia with other laws; provided, however,
20 that to the extent that this act specifically conflicts with
21 other laws pertaining to criminal history background
22 information checks, this law shall take precedence. Nothing
23 contained in this act shall be construed to diminish, reduce,
24 or conflict with the authority of the Department of Human
25 Resources to interpret and apply appropriate federal and state
26 laws governing that agency and its programs.

1 Section 14. This act shall become effective on the
2 first day of the sixth month following its passage and
3 approval by the Governor, or its otherwise becoming law.

Gene Hinson

President and Presiding Officer of the Senate

Robert L. Huff

Speaker of the House of Representatives

Senate 09-MAR-2000

I hereby certify that the within Act originated in and passed the Senate, as amended.

McDowell Lee
Secretary

House of Representatives
Amended and passed 11-MAY-2000

Senate concurred in House amendment 15-MAY-2000

By: Senator Enfinger

APPROVED 5-25-00

TIME 3:11pm

[Signature]
GOVERNOR

Alabama Secretary of State

Act Num....: 2000-775
Bill Num....: S-273

Recv'd 05/25/00 05:48pmHMB